91-889

In The

Supreme Court of the United States

Supreme Court, U.S.
FILED
SEP 6 1991
OFFICE OF THE CLERK

LEONARD J. KERPELMAN,

Petitioner,

vs.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

Respondent.

October Term 1991

No.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

LEONARD J. KERPELMAN
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In Proper Person

1. (a)

QUESTIONS PRESENTED

1. Was the Petitioner attorney disbarred by means unconstitutional under the Fourteenth Amendment to the U. S. Constitution, by virtue of myriad Due Process violations committed by the Maryland court and particularly by the appellate court of that state?

2. Is the taking of disbarment jurisdiction a usurpation of power by the Maryland appeals court not granted to it by the state constitution, and so, itself a denial of Due Process under the U. S. Constitution?

3. Has the Maryland court failed and refused to permit any meaningful Due Process review, thus requiring this court's intervention under Middlesex Township v.Garden State Bar Association, 102 S. Ct. 2523?

Two Subsidiary Questions

4. Was this action, by the court, of usurpation of the authority to disbar, which clearly belongs to the Legislature of Maryland or the people, an action against the peace, government, dignity and constitution of the state, a denial of the Petitioner's federal Due Process right to peacefully and lawfully practice the legal profession? That question not having been any given meaningful consideration by the Maryland court, should this court --the Supreme Court --act, under the enjoinment it has given itself in the Middlesex v. Garden State case, infra?

5. Is the Attorney Grievance Commission of Maryland basically an arm of the Court of Appeals of Maryland so that there is a conflict of interest in the Maryland Court deciding a case between its own entity and an opposing party, amounting to a clear denial of federal Due Process to that opposing party?

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.1 (b)
LIST OF ALL PARTIES BEFORE THE COURT OF APPEALS OF MARYLAND

1. The Petitioner.

2. As Plaintiff below, The Attorney Grievance Commission of Maryland, an entity whose form ("corporation", "public organization," "private organization") is not known to the Petitioner, and is not apparent from its formation by the Court of Appeals of Maryland under that court's rule number BV 2c.

3. No other parties below.

.1 (d)
OPINIONS PUBLISHED

The case below is reported as Attorney Grievance Commission of Maryland v. Kerpelman, Md , A2d .

There are no opinions of other courts delivered in the case. There was a hearing conducted by a "master" not acting as a "court," under the loose procedures invented by the

Respondent's mentor, the appeals court. This "master" made "findings of fact" finding the Petitioner guilty or in violation of certain "disciplinary code" ethics. He rendered no "opinion" as such. One Robert Hammerman was the master. His "findings", however, are in the Appendix.

.1 (e)
GROUNDS FOR INVOKING THE JURISDICTION OF THIS COURT

(i)

The judgment disbarring the Petitioner was rendered on June 28, 1991, less than ninety days, as required, prior to the filing of the within petition.

(ii)

No order respecting a rehearing; and no order respecting an extension of time, has been requested or granted.

(iii)

This petition is a petition and not a cross-petition and does not rely on Rule

12.3 of this court.

(iv)

The statutory provision believed to confer jurisdiction on this court to review the judgment in question by writ of certiorari is title 28 USC Sec 1257(3):

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed...
>
> "(3) by writ of certiorari, where ...any ...right, privilege or immunity is ...claimed under the Constitition of the United States."

.1(f)

The constitutional provisions, statutes, and regulations involved in the case are the following, in chronological order of passage or effect:

1. Statute of I George I Ch. XLVII (1715), which is stated to be "An Act for rectifying ill practices of attornies of (the) province

(of Maryland)... .":

> (N)o attorney ...shall practice the law in any of the courts of this province, without being admitted thereto by the justices of the several courts, who are hereby empowered to admit and suspend them (salva jure corona) until his majesty's pleasure shall be known therein;... ."

2. U.S. Constitution Amendment VII on suits at common law,

> "Where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,... ."

3. U.S. Constitution, Amendment XIV:

> " ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

4. Article 5 of the Declaration of Rights, of the Maryland Constitution of 1867, giving citizens the benefit of "the Common Law and Statutes of England as they existed prior to July 4, 1776.":

> That the Inhabitants of Maryland are entitled to the Common Law of England and the trial by Jury, according to the course of that Law and to the benefit of such English statutes as existed on the Fourth day of July seventeen hundred and seventy-six;... ."

5. Chapter 305 Acts of 1977 (Maryland Legislature) (Senate Bill 239):

"AN ACT CONCERNING

"Attorney-Discipline

"For the purpose of repealing those provisions relating generally to disciplining of attorneys; ...

"Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND That Sections 11, 12, 13, 13A, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of Article 10 - Attorneys at Law and Attorneys in Fact, of the Annotated Code of Maryland (1976 Replacement Volume and 1976 Supplement) be and they are hereby repealed."

6. Rule BV 2c of the Maryland Rules, not an Act of the General Assembly, of course, but a rule adopted by the Court of Appeals of Maryland, the sole trier of fact in this case:

"The Attorney Grievance Commission of Maryland is ...created."

Compare:

"In the beginning God ('Yah weh' of the

Ancient Hebrews) created the heaven and the earth."

"Genesis" Ch. 1, verse 1. "King James" rendition of a very ancient Oral Tradition.

STATEMENT OF THE CASE (CONCISELY)

By the weirdest procedure ever seen by this court--weird in at least 33 ways ("Exceptions were filed to 33 of the court's actions, all based on denial of Due Process)--the Petitioner was deprived of the privilege, right and liberty, of practicing law, in violation of the Fourteenth Amendment, U. S. Constitution. He was disbarred.

The procedure used was an unlawful usurpation of power, power withheld from the Maryland Court of Appeals by the Maryland constituition of 1867 (the present constitution) and lodged by that constitution in the circuit courts by virtue of the power's return there when the Legislature knowingly repealed all

laws relating to attorney discipline. Use of this procedure was then, itself a denial of Due Process under Amendment XIV. Since the court's bootstrap operation was a nullity under Due Process, it was unnecessary to raise the question below.

Also, the question of such usurpation has not been decided by any state court, including Maryland's, where, of course, there would be a conflict of interest of that court, and so Rule 10.1(b) of this court is believed to impliedly apply --that the usurpation is a conflict with other state courts. Or, the case comes under the general provision of Rule 10.1 that certiorari will be granted when there are important reasons for this court to decide an issue. Usurpation of state constitutional power by an appellate court and the Maryland court's innate conflict in deciding that question would seem to be matters "important" in this sense.

Or, title 28 USC Sec 1257(3), on its

face, gives this court jurisdiciton.

All points of Due Proces were raised at the only stage where they explicitly could be raised, by "exceptions" before the appellate court, and certain of the points having to do with denial of Due Process by bias and prejudice were raised also by motions to dismiss at the so-called "master" stage of the proceedings.

All exceptions and all motions were denied, each one premptorily.

The following were raised and denied by Exceptions and Supplemental Exceptions. Not all of the 33 or more Due Process denials are listed here. If those listed are not luridly sufficient to arouse the court, neither would 1000 others be sufficient.

1. A jury trial was denied.
2. The start of the proceedings was marked by the transmission of a <u>glorious</u> document to each

member of the trying court by a circuit court judge who informed the trying court that he did not like the petitioner, and was convinced that whatever he was charged with, he was guilty of. Appendix 40-41A. See the opinion of the court, in which, incredibly, in stating it had refused to disqualify Davis (the judge referred to), it indicates, quite offhandedly, that it believes the inflammatory statements are true. They were denied under oath by the petitioner! See 40-43A. They refused to disqualify Davis for bias, showing their bias.

3. The hanging judge selected --hand-picked --to try the Petitioner below --without a jury --was biased.

4. And, this judge, in the midst of the proceedings was a subject of complaint to a judicial oversight

"commission," being accused by the petitioner of obstructing justice by illegally tampering with a criminal case. One day during the proceedings he made an ex parte and secret call to another judge and influenced that judge's decision by getting him to postpone a pending criminal case in which petitioner was counsel and the defendant therein was entitled to, and was demanding, a speedy trial. See Appendix A. Professional ethics of the legal profession required the petitioner to file a complaint, against the judge ("master"). But when requested to recuse himself in this case, because the petitioner made the complaint he was required to make, the judge ("master') in question refused to do so.

Incidentally, the appeals court's

statement in the opinion that this civil case takes precedence over a criminal case is simply but totally incorrect under Maryland practice! Moreover, the criminal case was scheduled first! Hammerman's interference was almost certainly a felony obstruction of justice! How the Maryland court can blithely accept it is beyond this petitioner. The Maryland court had the audacity to say "(Petitioner's) contention is spurious and deserves no further comment."!

5. The right of cross-examination of a judge-witness, one Weinstein, was destroyed by the under-judge conducting the "master's" proceedings. When the petitioner walked out in disgust, the same under-judge changed the order of scheduling and called in a principle witness

against the petitioner while the petitioner was not there to cross-examine, and refused to recall the witness when the petitioner found out.

6. By the hostile Maryland court's own description in its opinion, it disbarred the petitioner for no more than competently, vigorously, and with profound integrity, representing his client fully, courageously and well. (The McIntyre matter.)

7. Questions of denial of Due Process are not permitted to be excepted to at the early, important, stages of disbarment proceedings as invented by this appellate court. Instead, God-like, the errors <u>are deemed "cured"</u> by the case being decided by the God-like court! See Md Rule BV10.b. and d. "Hearing",

and cases thereunder. Whatever can "cured" mean? The answer is, frankly, beyond the ken of the petitioner.[1] This non-reviewability of federal constitutional questions makes the case immediately reviewable by this court under Middlesex v.Garden State, 102 S.Ct. 2523.

8. The Grievance Commission is a self-created arm of the appeals

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1 Note that appellate court says, "These contentions (federal Due Process violations) are meritless since Kerpelman was afforded notice and an opportunity to defend following the institution of these proceedings." (Emph. supp.) This is another strange contention as neither court nor "master" provided any opportunity whatever, and there is none in the so-called "BV Rules" for any, evidentiary or otherwise.

court, part of the same entity, and so it is a complete conflict for the appeals court to be the •

9. The under-judge distorted the hearing record, both subtly and heavy-handedly by stating untrue subjective matter not showable in the record. For example "The defendant is shouting.", when the petitioner was not in fact "shouting".

10. A panel against the petitioner was not picked randomly but was hand-picked for bias against the Petitioner, early in these proceedings. Then, at one point, petitioner was subjected by this panel to imminent imprisonment by the local police. The police were called in by the panel "chairman" and were present in force, and armed. Petitioner was then prevented from making his own accurate record

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• trier of fact and decider of any case to which the Grievance Commission is a party. See Maryland BV Rules generally!

of the panel's proceedings. (In former proceedings the Record was admittedly severely inaccurate, and taken by a stenographer whose identity was withheld from all, both the court and the petitioner.) See film record in hands of Maryland Court Clerk as an exhibit, as to the calling in of the armed police. The whole event is shown in a talking picture, in real time, with the real persons involved, the panel chairman, the panel, and the police. The calling of the police is the matter which was excepted to.

11. Interrogatories claimed not to have been answered by the petitioner, causing a de facto determination by the appeals court that the bulk of petitioner's case had been let go "by default," had clearly, in fact, been answered.

Certainly an evidentiary hearing should have been required to sustain the appeals court's strange position.

12. Petitioner was disbarred for charging $6000, "a clearly excessive fee" the Maryland court called it, and therefore an ethical violation, for representing an accused child sexual abuser for over six months, and getting the case dismissed on motions. This "judgment" is not only unreasonable and incorrect as a matter of law, but it is nonsense.

13. Etc.

All constituting denials of Due Process.

For the full text of all of the exceptions, see the Record below.

Usurpation and Nullity, How Raised

One need not raise the issue questioning whether The Red Queen may order, "Off With

His Head, Off with His Head!" need one? The action, out of Wonderland, would be a nullity.

I
DUE PROCESS POINTS

CONCISE ARGUMENT

These are all obvious points (see "Statement of the Case") and the concise argument, perhaps the best argument, is to say that, as to each, an examination of the question raised by the exceptions and motions to dismiss, force the answer: <u>each thing</u> <u>was obviously impermisssible</u>.

Additionally, this case is important for the reason that the very charges in this case, some silly, some unreasonable, show that the present Maryland Grievance Commission system may be used, and is used, for harassment and suppression. The petitioner had been

a frequent critic of the Maryland judiciary.[2] But for twenty years, before the invention of this monstrous system, under the old Canons of Ethics and the century old peer review system, he never had a breath of trouble.

II

USURPATION AND NULLITY

A Concise Argument

The Maryland Court has no power to act in disbarment cases. None. How does that then raise a cognizable issue for this court? -Because usurpation is in conflict with decisions of other states, which all, unanimously hold, that courts are only <u>given</u> power, they cannot <u>take</u> it. (The Maryland court has <u>never</u> claimed

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[2] See, for example, his book, Divorce, A Guide For Men. 1980 Icarus/Harper & Row.

"inherent" power to disbar or otherwise regulate the profession of law in any Maryland case.) The court is, by Article X, Maryland Constitution, a court of explicit granted powers only.

Here is the history --quite a simple one --of the power to admit and disbar, then.

In Colonial Days

--We are enlightened to a "t" by the language of a statute of the year 1715, Chap. XLVIII of I George I, which was characterized in its preamble as, "An act for rectifying the ill practices of attornies of this province...".

It provides: The "justices" of the "several" courts shall "admit and suspend" attorneys.

Next Comes

--The Maryland constitution of 1867. It strictly sets forth what courts may

do, and what the judiciary may do, in Article X. Nowhere is there included the right to admit, suspend, or disbar.

And, in Article 5 of that constitution's Declaration of Rights, everywhere recognized under Maryland law as being an integral part of the constitution, and, if anything, more important and of greater stature than the main body of the constitution, it is stated:

> "The Inhabitants shall have the Benefit of the Common Law and Statutes of England as they existed on the fourth day of July, seventeen seventy-six."

The Statute of I George I was still in effect on the fourth day of July, seventeen seventy six.

And Next

--The Legislature passed statutes called "Attorneys at Law and In Fact," taking over the subject of attorney admission, suspension, and disbarment.

And Then

--And then the Legislature repealed those laws:

By Chapter 305, Laws of 1977.

See p. 8 , infra for that text.

Where Then, Is the Power to Disbar?

--Back in the confines of English Statutes and Common Law of the year seventeen seventy six, is where the power once again immediately devolved, upon the Legislative repeal of 1977. It did not devolve over to the Maryland Court of Appeals without a further Legislative Act!

Thus,

--Thus, returning the power to the circuit court judges. (The judges "of the several courts.")

And the Lesislature has passed no new act since.

Ergo, Usurpation

The Court of Appeals has "Rule Making" power. But not the power to invent a new system of adjudication --for disbarment of attorneys which is outside the explicit grant of powers of Maryland Constitution Article X; and not the power to take over a vacant turf at its own whim, and certainly not without any Legislative sanction whatever. This is obviously not "rule making"; this is obviously Legislative Usurpation.

A lot of nerve, eh?

Nothing else but.

So All

--Of its proceedings in this case were a nullity, a mere unlawful usurpation of power it did not have, of power, it obviously must appear, which was over the years of history set forth above, carefully withheld from it.

EPILOGUE; CONCLUSION

A wrong has been done, unconstitutionally under federal law and principle. The court is requested to grant certiorari.

Respectfully submitted,

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